REMARKS/ARGUMENTS

The present amendment is in response to the Office Action mailed June 24, 2004, in which Claims 2 - 5, 8, 9, 12, 13, 15 - 17, and 20 were rejected. Applicant has thoroughly reviewed the outstanding Office Action including the Examiner's remarks and the reference cited therein. The following remarks are believed to be fully responsive to the Office Action and, when coupled with the amendments made herein, are believed to render all claims at issue patentably distinguishable over the cited references.

Independent Claim 13 has been amended. No claim has been canceled by the present amendment. New Claims 21 - 31 are submitted for consideration at this time. Accordingly, Claims 2 - 5, 8, 9, 12, 13, 15, 16, 17, and 20 through 28 are pending.

All the changes are made for clarification and are based on the application and drawings as originally filed. It is respectfully submitted that no new matter is added. Applicant respectfully requests reconsideration in light of the above amendments and the following remarks.

CLAIM AMENDMENTS

Applicant has amended independent Claim 13 by changing "said film comprising a base layer composed of a substantially non-porous polypropylene homopolymer and an outer layer, wherein said outer layer comprises a heat sealable polymer" to -- said film comprising a base layer composed of a polypropylene homopolymer and an outer layer, wherein said film has a density of 0.8 g/cm^3 or more and said outer layer comprises a heat sealable polymer --. This new limitation is based upon the

specification as originally filed, for example, at page 5, second paragraph. Accordingly, Applicant respectfully submits that no new matter is added by this change.

NEW CLAIMS

Applicant submits for consideration at this time new Claims 21 through 28. These new claims are based on the following:

New Claim 21 is based upon Claim 13 as amended herein but specifies inclusion of a filler as well as defining the possible fillers and further specifies the film as having a density of less than 0.8 g/cm^3. Bases for these limitations can be found in the application as originally filed, for example, at page 5, third paragraph.

New Claim 22 is based upon previously-submitted Claim 2.

New Claim 23 is based upon previously-submitted Claim 3.

New Claim 24 is based upon previously-submitted Claim 4.

New Claim 25 is based upon previously-submitted Claim 5.

New Claim 26 is based upon previously-submitted Claim 8.

New Claim 27 is based upon previously-submitted Claims 9, 12 and 20.

New Claim 28 is similar to new Claim 21, but specifies the filler as being non-siliceous, based upon the chalk and polymeric fillers set forth in the specification as filed.

WITHDRAWN REJECTIONS

Applicant acknowledges with appreciation the withdrawal of various rejections set forth in Paragraphs 1 through 5 of the Office Action.

REPEATED REJECTIONS

With respect to Paragraph 6 of the Office Action, the Examiner repeated his rejection of Claims 2 - 5, 8, 9, 12, 13, 15 - 17 and 20 as being anticipated by U.S. Patent No. 4,892,779 to Leatherman *et al.* (hereinafter referred to as "Leatherman *et al.*") under 35 U.S.C. Section 102. Of the rejected claims only Claim 13 is independent.

Applicant again respectfully traverses this rejection.

Leatherman *et al.* is patentably distinguishable from the invention as presently claimed on at least the following grounds.

1. Shrinkage

Independent Claim 13 specifies " the label being formed from a biaxially oriented polypropylene based film having a shrinkage of at least 4% in both the machine and transverse directions." (New independent Claims 21 and 28 include the same limitation.) Leatherman *et al.* - together with the other references cited during the course of the present prosecution - *teaches away* from this feature and generally characterize shrinkable film as being undesirable. Specifically, in col. 10, lines 50 to 57, of Leatherman *et al.* it is explicitly emphasized that the film shall be annealed after stretching such that shrinkage is minimized:

> "After stretching has been accomplished, the microporous material may optionally be sintered, annealed, heat set, and/or otherwise heat treated. During these optional steps, the stretched microporous material is usually held under tension **so that it will not markedly shrink at the elevated temperatures employed,** although some relaxation amounting to a small fraction of the maximum stretch ratio is frequently permitted." (emphasis added)

Applicant respectfully submits that the use of a shrinkable wrap is more than design choice and, in fact, results in a superior product. It is clear that the invention as presently claimed is patentably distinguishable from Leatherman *et al.* at least for the difference between shrinkage of the film.

2. Porous *vs.* Voided

An important distinction between Leatherman *et al.* and the invention as presently claimed relates to the differences between pores and voids. As presently claimed in independent Claim 13, the film "compris[es] a base layer ... [and the film] has a density of 0.8 g/cm^3 or more." According to this composition as now defined it is clear that the claimed film is non-porous. The original density of polypropylene is 0.9 g/cm^3. The claimed invention specifies the film as having a density of 0.8 g/cm^3 or more, thus it is *impossible* to have a porous structure with this density.

Accordingly it is clear that the invention as presently claimed is directed to non-porous film. Conversely, Leatherman *et al.* is directed to a film having a very high amount of filler which is specified as being of at least 50% to 90% by weight (please see col. 5, lines 27 - 32) with the filler itself having large particle size of 5 μm to 40 μm (col. 3,lines 27 - 30). The result of using such filler is that interconnecting pores are created in the film as set forth in Leatherman *et al.* at col. 1, lines 30 - 33. A vivid illustration of a

sample of a product having such interconnecting pores is attached as **Exhibit - A**. This exhibit shows a surface view of the film.

Contrarily, while being non-porous, film of the present invention is *voided*. A voided film is achieved through the addition of a moderate amount of an incompatible filler material. When the film is stretched the filler-containing polypropylene ruptures at the surface of the filler, and voiding results. Thus that while it is true that polypropylene ordinarily has neither pores nor voids, polypropylene is nevertheless a thermoplastic material which, by means of certain processes or by the addition of certain additives such as fillers, can be processed under the right circumstances into a porous or voided structure. The present invention includes voids which are not pores but which are introduced by means of the filler additive. An illustration of a sample of product having voids is attached as **Exhibit - B**. This exhibit shows a cross-section view of the Applicant's voided film structure.

For clarification, Applicant notes the following on conjunction with the attached **Exhibit - A** and **Exhibit - B**. A porous structure is characterized by interconnected open cells through which a gas can pass, as is made clear by reference to **Exhibit - A**. Porous films of this type are used as permeable or semi-permeable membranes for packaging materials which may require the passage of air, for example. Such packaging materials may be used in the packaging of high moisture content food, such as salad.

Conversely, voided films are barrier films which prohibit the passage of air and other gases and are suitable for film applications where the passage of air would be detrimental. Such packaging is highly appropriate in the packaging of food stuff.

As clearly set forth in Applicant's amended independent Claim 13 and in new independent Claims 21 and 28, the claimed density renders the present invention non-porous. It is clear that the invention as presently claimed is patentably distinguishable from Leatherman *et al.* at least for the difference between porosities.

3. Application as Container Material

The invention as presently claimed further differs from Leatherman *et al.* in that the latter has no relationship to the specific combination of a polyethylene container and being labeled with a polypropylene label. This combination has particular criticality with respect to blistering and orange peeling. While Leatherman *et al.* might suggest films based upon polypropylene and polyethylene there is absolutely no suggestion that a polypropylene film can be used for labeling a polyethylene container *if the shrink is at least 4%.* In Leatherman *et al.* there is simply no mention of the container material at all.

It is clear that the invention as presently claimed is patentably distinguishable from Leatherman *et al.* at least for the difference regarding utility as a container material.

4. Conclusions with respect to the rejections under 35 U.S.C. Section 102(b)

In summary, and according to the above-analysis, independent Claims 13, 21 and 28 are distinguishable from Leatherman *et al.* at least for the following reasons:

First, the structure of Leatherman *et al.* has low, perhaps no, shrinkage, which teaches away from the invention as presently claimed in which the film has at least 4% shrinkage.

Second, the structures of Leatherman *et al.* are porous. Conversely, the invention as presently claimed specifies a film having a density of 0.8 g/cm^3 or more, thus defining a *non-porous* film.

Third, Leatherman *et al.* say absolutely nothing as to the container material and they do not disclose a particular container material which is to be combined with a polypropylene or polyethylene label. Conversely, Applicant specifies a film construct having a combination of a polyethylene container and a polypropylene label.

Reconsideration and withdrawal of the Examiner's rejection of independent Claim 13 under 35 U.S.C. Section 102(b) as being anticipated by Leatherman *et al.* is respectfully requested. Insofar as the remaining dependent claims also rejected under 35 U.S.C. Section 102(b) as being anticipated by Leatherman *et al.* only further limit the scope of independent Claim 13, Applicant respectfully submits that these claims are allowable over the art of record as well.

NEW OBJECTION

With respect to Paragraph 7, the Examiner objected to the specification under 35 U.S.C. Section 132 because the added material "that the base layer is composed of substantially non-porous polypropylene homopolymers."

Applicant has amended Claim 13 herein to delete the specified language and thus respectfully submits that the objection is now overcome.

NEW REJECTIONS

1. 35 U.S.C. Section 112, 1st Paragraph

With respect to Paragraph 8 of the Office Action, the Examiner rejected Claims 2 - 5, 8, 9, 12, 13, 15 - 17, and 20 under 35 U.S.C. Section 112, 1st Paragraph, for failing to comply with the written description requirement in that the claims contained subject matter not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.. Specifically, independent Claim 13 contained the limitation that the base layer is composed of substantially non-porous polypropylene homopolymers which was not set forth in the specification.

Applicant has amended Claim 13 herein to delete the specified language and thus respectfully submits that the rejection is now overcome.

2. 35 U.S.C. Section 112, 2nd Paragraph

With respect to Paragraph 9 of the Office Action, the Examiner rejected Claims 2 - 5, 8, 9, 12, 13, 15 - 17, and 20 under 35 U.S.C. Section 112, 2nd Paragraph, as being indefinite for failing to point out and distinctly claim the subject matter which the applicant regards as the invention. Specifically, the Examiner stated that it was not understood if the base layer is non-porous or just that the polypropylene homopolymer is non-porous but the layer can be porous or non-porous.

Applicant has amended Claim 13 herein to delete the specified language and thus respectfully submits that the rejection is now overcome.

CONCLUSION

In light of the above amendments and remarks, Applicant respectfully submits that all pending claims as currently presented are in condition for allowance. If, for any reason, the Examiner disagrees, please call the undersigned attorney at 248-433-7552 in an effort to resolve any matter still outstanding *before* issuing another action. The undersigned attorney is confident that any issue which might remain can readily be worked out by telephone.

Respectfully submitted,

Thomas T. Moga
Registration No. 34,881
Attorney for Applicants

DICKINSON WRIGHT PLLC
1901 L Street, N.W., Suite 800
Washington, D.C. 20036
202-457-0160

Dated: 9/24/04

TTM/hs